



PUBLIC NOTICE

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**FEDERAL COMMUNICATIONS COMMISSION CLARIFIES THAT CERTAIN
TELECOMMUNICATIONS RELAY SERVICES (TRS) MARKETING AND CALL HANDLING
PRACTICES ARE IMPROPER AND REMINDS THAT VIDEO RELAY SERVICE (VRS) MAY
NOT BE USED AS A VIDEO REMOTE INTERPRETING SERVICE**

CC DOCKET NO. 98-67

CG DOCKET NO. 03-123

The Federal Communications Commission (FCC or Commission) has become aware that some TRS providers may be engaging in marketing practices that are inconsistent with the TRS statute and regulations. We have also become aware that some TRS providers may not be handling TRS calls in a manner that is consistent with our TRS statute and regulations, *e.g.*, through the use of a reservations system. Finally, we are aware that Video Relay Service (VRS) – a form of TRS – is sometimes being used as a substitute for a live interpreter when a person who is deaf or hard of hearing seeks to communicate with a hearing person at the same location. Accordingly, we clarify below that certain TRS practices violate the TRS rules, and that VRS may not be used as a video remote interpreting service by persons at the same location. We will instruct the TRS fund administrator that, effective March 1, 2005, any provider found to be engaging in the improper marketing or call handling practices described below will be ineligible for compensation from the Interstate TRS Fund (Fund).¹

Background

TRS, mandated by Title IV of the Americans with Disabilities Act (ADA) of 1990,² enables an individual with a hearing or speech disability to communicate by telephone with a person without such a disability. This is accomplished through TRS facilities that are staffed by specially trained communications assistants (CAs) who relay conversations between persons using various types of assistive communication devices and persons using a standard telephone. In a traditional text-based TRS call, for example, a TTY user types the number of the TRS facility and, after reaching the facility, types the number of the party he or she desires to call. The CA, in turn, places an outbound voice call to the called party. The CA serves as the “link” in the conversation, converting text messages from the caller into voice messages, and voice messages from the called party into text messages for the TTY user.

¹ In addition, we will also consider appropriate enforcement action against providers that engage in any of the improper practices discussed herein.

² Pub. L. No. 101-336, § 401, 104 Stat. 327, 336-69 (1990), adding section 225 to the Communications Act of 1934; *see* 47 U.S.C. § 225.

VRS is a form of TRS that allows people with hearing and speech disabilities to communicate with the CA through sign language, rather than typed text. Video equipment links the VRS user and the CA so that they can see and communicate with each other in signed conversation. Presently, VRS services are accessed through a broadband connection and video equipment connected to a personal computer or a television.

The provision of TRS is “an accommodation that is required of telecommunications providers, just as other accommodations for persons with disabilities are required by the ADA of businesses and local and state governments.”³ To this end, Section 225 is intended to ensure that TRS “give[s] persons with hearing or speech disabilities ‘functionally equivalent’ access to the telephone network.”⁴ The statute and regulations provide that eligible TRS providers offering interstate services and certain intrastate services will be compensated for their just and “reasonable” costs of doing so from the Interstate TRS Fund, currently administered by the National Exchange Carrier Association (NECA).⁵

Section 225 and the TRS mandatory minimum standards contained in the regulations set forth the operational and technical standards TRS providers must meet. These standards reflect the functional equivalency mandate. We have repeatedly stated that, as a general matter, TRS providers seeking compensation from the Interstate TRS Fund must meet all non-waived mandatory minimum standards.⁶ This is true whether the TRS service is a mandatory form of the TRS (like traditional TTY-based TRS) or a non-mandatory form of TRS (like IP Relay and VRS).⁷

Improper Marketing Practices

The Commission has received numerous complaints regarding improper marketing practices, particularly with regard to the provision of VRS. First, we understand that some providers install video equipment at a consumer’s premise to enable the consumer to make VRS calls. We further understand that in the course of installing the equipment, the provider’s installer may tell the consumer that he or she may only have one VRS provider, or that the consumer’s broadband connection may be connected to only one piece of video equipment (generally the equipment of that provider). These statements have the effect of requiring the consumer to choose a single VRS provider. We also understand that some installers may

³ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123, FCC 04-137, 19 FCC Rcd 12475 at ¶ 182 n.521 (June 30, 2004) (*2004 TRS Report & Order*).

⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 98-90, 1998 WL 251383 at ¶ 6 (May 20, 1998) (*1998 TRS NPRM*); *see generally* 47 U.S.C. § 225(a)(3).

⁵ *See, e.g.*, 47 C.F.R. § 64.604(c)(5)(iii)(E).

⁶ *See, e.g.*, 47 C.F.R. § 64.604(c)(5)(iii)(E) (“The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604.”); *2004 TRS Report & Order* at ¶ 189.

⁷ *See, e.g.*, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 00-56, 15 FCC Rcd 5140 at ¶ 39 (March 6, 2000) (*2000 Improved TRS Order*) (“all relay services either mandated by the Commission or eligible for reimbursement from the interstate TRS Fund must comply with the mandatory minimum standards”).

adjust the consumer's hardware or software to restrict the consumer to using one VRS provider without the consumer's consent.

The TRS rules do not require a consumer to choose or use only one VRS (or TRS) provider. A consumer may use one of several VRS providers available on the Internet or through VRS service hardware that attaches to a television. Therefore, VRS consumers cannot be placed under any obligation to use only one VRS provider's service, and the fact that they may have accepted VRS equipment from one provider does not mean that they cannot use another VRS provider via other equipment they may have. In addition, a VRS provider (or its installers) should not be adjusting a consumer's hardware or software to restrict access to other VRS providers without the consumer's informed consent.

Second, we understand that some providers use their customer database to contact prior users of their service and suggest, urge, or tell them to make more VRS calls. This marketing practice constitutes an improper use of information obtained from consumers using the service,⁸ is inconsistent with the notion of functional equivalency, and may constitute a fraud on the Interstate TRS Fund because the Fund, and not the consumer, pays for the cost of the VRS call. As we have noted, the purpose of TRS is to allow persons with certain disabilities to use the telephone system. Entities electing to offer VRS (or other forms of TRS) should not be contacting users of their service and asking or telling them to make TRS calls. Rather, the provider must be available to handle the calls that consumers choose to make.⁹ For this reason as well, VRS providers may not require consumers to make TRS calls, impose on consumers minimum usage requirements, or offer any type of financial incentive for consumers to place TRS calls.¹⁰

Finally, we understand that some VRS (or TRS) providers may selectively answer calls from preferred consumers or locations, rather than answer the calls in the order they are received. For example, the VRS provider may monitor a list of incoming callers waiting for a CA and, rather than handling the calls in order, will first handle calls from preferred customers or from a specific location. This practice also constitutes an improper use of information obtained from consumers using the service and is inconsistent with the notion of functional equivalency. Providers must handle incoming calls in the order that they are received.

We will continue to carefully monitor the provision of all forms of TRS to the public. To the extent providers offer TRS services in violation of our rules, they will be ineligible for compensation from the Interstate TRS Fund.

Improper Handling of TRS Calls

We understand that some providers permit TRS consumers (particularly VRS users) to make advance reservations so that the consumer can reach a CA without delay at a specific time to place a call. This practice is inconsistent with the functional equivalency mandate of Section 225 and the TRS regulations.

⁸ See 47 C.F.R. § 64.604(a)(2)(i).

⁹ In this regard, we question whether there are any circumstances in which it is appropriate for a TRS provider to contact or call a prior user of their service. Again, the role of the provider is to make available a service to consumers as an accommodation under the ADA when a consumer may choose to use that service.

¹⁰ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling, CC Docket No. 98-67, CG Docket No. 03-123, DA 05-140 (Jan. 26, 2005).

Under the functional equivalency mandate, TRS is intended to permit persons with hearing and speech disabilities to access the telephone system to call persons without such disabilities. As we have frequently noted, “for a TRS user, reaching a CA to place a relay call is the equivalent of picking up a phone and getting a dial tone.”¹¹ Therefore, TRS is intended to operate so that when a TRS user wants to make a call, a CA is available to handle the call. For this reason, for example, the TRS regulations presently require TRS providers (except in the case of VRS) to answer 85% of all calls within 10 seconds.¹² This “speed of answer” requirement was adopted so that the experience of a TRS caller in reaching a CA to place his or her call would be functionally equivalent to the experience of an individual without a hearing or speech disability placing a call.¹³ The Commission has noted that the “ability of a TRS user to reach a CA prepared to place his or her call ... is fundamental to the concept of ‘functional equivalency.’”¹⁴

As a result, we find that the practice of permitting TRS consumers to reserve in advance a time at which a CA will handle a call is inconsistent with the nature of TRS and the functional equivalency mandate. TRS providers must have available CAs that can handle the calls as they come in (to, by analogy, provide the “dial tone”) consistent with our rules. Handling calls by prior reservation is a different kind of service. For the same reason, calls must be handled in the order in which they are received (as we have also stated above). The fact that VRS is not a mandatory service, or that speed of answer has presently been waived for VRS, does not affect the application of these principles to VRS.¹⁵

In addition, TRS providers may not offer their service in such a way so that when a TRS consumer (including a hearing person) contacts the TRS provider the consumer reaches only a message or recording that asks the caller to leave certain information so that the provider can call the consumer back when the provider is able (or desires) to place the call. This type of “call back” arrangement is impermissible because it relieves the provider of its central obligation to be available when a caller desires to make a TRS call, and permits the provider, and not the caller, to ultimately be in control of when a TRS call is placed. As we have noted, the functional equivalency mandate rests in part on the expectation that when a TRS user reaches a CA that is the equivalent of receiving a dial tone.¹⁶

¹¹ 2000 *Improved TRS Order* at ¶ 60.

¹² See 47 C.F.R. § 64.604(b)(2). This requirement has presently been waived for VRS, and has been raised in the FNPRM in the 2004 *TRS Report & Order*. See 2004 *TRS Report & Order* at ¶¶ 119-123 (extending speed of answer waiver until January 1, 2006, or until such time as the Commission adopts a speed of answer rule for VRS, whichever is sooner); 2004 *TRS Report & Order* at ¶ 246 (raising issue in FNPRM). See also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, DA 01-3029, 17 FCC Rcd 157 at ¶¶ 15-16 (Dec. 31, 2001) (*VRS Waiver Order*) (original VRS waiver order, which waived the speed of answer requirement for VRS to encourage more entrants into the VRS market, stimulate the growth of VRS, and provide more time for technology to develop).

¹³ 1998 *TRS NPRM* at ¶ 49.

¹⁴ *Id.* (emphasis added).

¹⁵ See note 6, *supra*.

¹⁶ We distinguish this situation from the use of a “call back” service whereby a consumer, who has called the relay center to make a TRS call and reaches the provider but has to wait for an available CA, has the *choice* of either waiting for an available CA (*i.e.*, without disconnecting) or having the TRS provider call the consumer back when a CA is available to handle the call. Nevertheless, we are concerned that the use of a “call back” option in any context is inconsistent with the functional equivalency mandate, and therefore we will closely monitor the use of this

Accordingly, because we interpret Section 225 and the implementing regulations to prohibit any practice that undermines the functional equivalency mandate, effective March 1, 2005, any provider offering or utilizing advance call reservations, or a recording that greets all calls to the TRS provider and takes information so that the provider can call the consumer back, will be ineligible for compensation from the Interstate TRS Fund.

VRS cannot be used as a substitute for Video Remote Interpreting (VRI)

We again remind providers (and consumers) that VRS is not the same as Video Remote Interpreting (VRI), even though both services use the Internet and a video connection to permit persons with hearing disabilities to communicate with persons without such disabilities.¹⁷ VRI is a service that is used when an interpreter cannot be physically present to interpret for two persons who are together at the same location (for example, at a meeting or in a doctor's office). In that situation, an interpreter at a remote location may be used via a video connection. A fee is generally charged by companies that offer this service.

By contrast, VRS, like all forms of TRS, is a means of giving access to the telephone system. Therefore, VRS is to be used only when a person with a hearing disability, who absent such disability would make a voice telephone call, desires to make a call to a person without such a disability through the telephone system (or if, in the reverse situation, the hearing person desires to make such a call to a person with a hearing disability). VRS calls are compensated from the Interstate TRS Fund, which is overseen by the Commission. In circumstances where a person with a hearing disability desires to communicate with someone in person, he or she may not use VRS but must either hire an "in-person" interpreter or a VRI service. We will continue to carefully scrutinize the provision and use of VRS to ensure that it is being used only as a means of accessing the telephone system, not as a substitute for VRI.

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feature. We also recognize that, given the speed of answer rule, use of a call back feature will be an issue only for those forms of TRS not subject to such a rule (e.g., VRS).

¹⁷ See generally 2004 TRS Report & Order at ¶¶ 162 n.466 & 172 n.490.